

EXHIBIT A

**SUMMONS
 (CITACION JUDICIAL)**

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
 (AVISO AL DEMANDADO):**
 ALAMEDA COUNTY MEDICAL CENTER,
 CEDRICK FROWNER,
 DOES 1 TO 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
 (LO ESTA DEMANDANDO EL DEMANDANTE):**
 LISA JOHNSON,
 by and through her Conservator, Sharon Toth

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
 (El nombre y dirección de la corte es):
 ALAMEDA COUNTY SUPERIOR COURT
 1225 Fallon Street
 Oakland, CA 94612

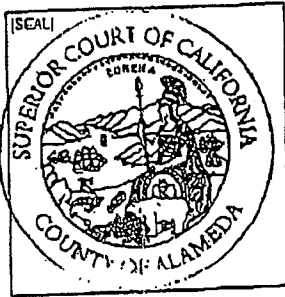
CASE NUMBER:
 (Número del Caso): CG 05 232745

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
 (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
 Charles Schwartz, Esq.
 2128 Broadway
 Oakland, CA 94612
 DATE: SEP 15 2005
 Clerk, by
 (Secretario)

Alphonsina Oates, Deputy
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served
 1. ☒ as an individual defendant.
 2. ☐ as the person sued under the fictitious name of (specify):



3. ☐ on behalf of (specify):
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
 4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
 Judicial Council of California
 SUM-100 (Rev. January 1, 2004)
 Martin Dean: Essential Forms TM

SUMMONS

JOHNSON - CS-951

Page 1 of 1
 Code of Civil Procedure §§ 412.20, 405

EXHIBIT A

1 Charles Schwartz, (State Bar #49769)
2 CHARLES SCHWARTZ, P.C.
3 2128 Broadway
4 Oakland, CA 94612
5 (510) 986-1300

6 Attorneys for Plaintiff

7 LISA JOHNSON

ENDORSED
FILED
ALAMEDA COUNTY

SEP 15 2005

CLERK OF THE SUPERIOR COURT
By Alphonsine Oates, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 (NORTHERN DIVISION)

11 (Unlimited Jurisdiction)

12 LISA JOHNSON, by and through
13 her Conservator, Sharon Toth,

14 Plaintiff,

15 v.

16 ALAMEDA COUNTY MEDICAL
17 CENTER, CEDRICK FROWNER,
18 DOES 1 to 50, inclusive,

19 Defendants.

ACTION NO.: R305232745

COMPLAINT FOR DAMAGES

20 Plaintiff LISA JOHNSON alleges as follows:

21 FACTS COMMON TO ALL CAUSES OF ACTION

22 1. Defendant CEDRICK FROWNER is an individual, and at all times herein mentioned,
23 is a resident of Alameda County, California.

24 2. Defendant ALAMEDA COUNTY MEDICAL CENTER is, and at all times herein
25 mentioned, a public entity organized and existing under the laws of the State of California.

26 3. Defendants Doe 1 through Doe 50, inclusive, are sued herein under fictitious names.
27 Their true names and capacities are unknown to the Plaintiff. When their true names and
28 capacities are ascertained, Plaintiff will amend this complaint by inserting their true names
and capacities of said defendants after they are ascertained. The plaintiff is informed and

COMPLAINT FOR DAMAGES

1 believes that each fictitiously named defendant is responsible for the matters herein alleged.

2 4. The plaintiff is informed and believes and thereon alleges that at all times herein
3 mentioned, each defendant, including all defendants sued under fictitious names, was the
4 agent and employee of each of the remaining defendants, and in doing the things hereinafter
5 alleged, was acting within the course and scope of this agency or employment.

6 5. The plaintiff is informed and believes that on or about June 17, 2005 defendant
7 CEDRICK FROWNER was housed at the John George Psychiatric Pavilion pursuant to an
8 emergency psychiatric evaluation under the custody and control of defendants ALAMEDA
9 COUNTY MEDICAL CENTER, and DOES 1 to 50.

10 6. The plaintiff is informed and believes that defendant CEDRICK FROWNER had a
11 history of prior brutality and criminal convictions and was known to defendants ALAMEDA
12 COUNTY MEDICAL CENTER, and DOES 1 to 50 as an individual prone to violent and
13 assaultive behavior.

14 7. On or about June 17, 2005, at approximately 5:00 a.m., the plaintiff was housed at the
15 John George Psychiatric Pavilion pursuant to an emergency psychiatric evaluation under the
16 custody and control of defendants ALAMEDA COUNTY MEDICAL CENTER, and DOES
17 1 to 50.

18 8. At said time and place, the defendants, ALAMEDA COUNTY MEDICAL CENTER,
19 and DOES 1 to 50, and each of them, negligently and carelessly failed to secure the door to
20 the plaintiff's room and negligently and carelessly failed to monitor and secure the
21 whereabouts of defendant CEDRICK FROWNER so that defendant CEDRICK FROWNER
22 was allowed access into the plaintiff's room.

23 9. Once inside the plaintiff's room defendant CEDRICK FROWNER sexually assaulted
24 the sleeping plaintiff by putting his erect penis into the plaintiff's mouth. Once the plaintiff
25 was awake, he attempted to engage in genital intercourse with her.

26 10. As a result of the acts of defendant CEDRICK FROWNER and the negligence and
27 carelessness of the defendant ALAMEDA COUNTY MEDICAL CENTER, and DOES 1 to
28 50, as alleged, the plaintiff suffered personal injury and severe emotional distress.

COMPLAINT FOR DAMAGES

- 2 -

11. On July 21, 2005, the plaintiff submitted a claim of damages to defendant ALAMEDA COUNTY MEDICAL CENTER for the injuries alleged in this complaint. Defendant ALAMEDA COUNTY MEDICAL CENTER rejected the plaintiff's claim of damages by operation of law on September 5, 2005.

12. On September 2, 2005, Sharon Toth, a principal in IMT Associates, was appointed as Conservator of the plaintiff with the authority to bring this action in behalf of the plaintiff.

FIRST CAUSE OF ACTION

(Sexual Battery-Civil Code §1708.5)

13. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 12, above.

14. The above conduct by defendant CEDRICK FROWNER is a violation of Civil Code §1708.5 in that CEDRICK FROWNER acted with the intent to cause a harmful or offensive contact by the use of his intimate part and a sexually offensive contact with the plaintiff directly occurred. Defendant CEDRICK FROWNER's conduct also caused the plaintiff to suffer imminent apprehension of such a contact occurring.

15. At no time did the plaintiff consent to any of the acts of defendant CEDRICK FROWNER alleged in paragraph 9, above.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

(Assault)

16. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 15 above.

17. In doing the acts as alleged above, defendant CEDRICK FROWNER intended to cause or to place the plaintiff in apprehension of a harmful or offensive contact with her person.

18. As a result of defendant CEDRICK FROWNER's acts as alleged above, the plaintiff, in fact, was placed in great apprehension of a harmful or offensive contact with her person.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

/ / / /

COMPLAINT FOR DAMAGES

- 3 -

1 **THIRD CAUSE OF ACTION**

2 **(Intentional Infliction of Emotional Distress)**

3 19. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 18
4 above.

5 20 Defendant CEDRICK FROWNER's conduct was intentional, outrageous, malicious
6 and done with ill will and with the intent of causing the plaintiff to suffer humiliating mental
7 anguish, and emotional and physical distress.

8 21. Defendant CEDRICK FROWNER's conduct was so severe and outrageous that as a
9 proximate result Plaintiff suffered humiliation, mental anguish and emotional and physical
10 distress.

11 WHEREFORE, Plaintiff requests relief as hereinafter provided.

12 **FOURTH CAUSE OF ACTION**

13 **(Negligence)**

14 22. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 21
15 above.

16 23. Defendants ALAMEDA COUNTY MEDICAL CENTER and DOES 1 to 50 owed a
17 duty to the plaintiff to provide secure facilities so that the plaintiff would not be subject to
18 harm from other patients. The defendants and each of them carelessly and negligently
19 breached their duty to the plaintiff by allowing defendant CEDRICK FROWNER access to
20 the plaintiff's room while she slept and by allowing defendant CEDRICK FROWNER to
21 engage in the conduct alleged in paragraph 9, above.

22 24. As a result of the carelessness and negligence of the defendants ALAMEDA COUNTY
23 MEDICAL CENTER and DOES 1 to 50 the plaintiff suffered injuries and damages as alleged
24 herein.

25 WHEREFORE, Plaintiff requests relief as hereinafter provided.

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COMPLAINT FOR DAMAGES

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1 **FIFTH CAUSE OF ACTION**

2 **(Respondeat Superior)**

3 25. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 24
4 above.

5 26. At all times herein mentioned, defendants DOES 1 to 50 were the agents and
6 employees of defendant ALAMEDA COUNTY MEDICAL CENTER. and, in doing the acts
7 herein described and referred to, were acting in the course and within the scope of their
8 authority as agents and employees, and in the transaction of the business of the ALAMEDA
9 COUNTY MEDICAL CENTER. Defendant ALAMEDA COUNTY MEDICAL CENTER
10 is therefore, liable to the plaintiff for the acts of defendants DOES 1 to 50 as heretofore
11 alleged.

12 WHEREFORE, Plaintiff requests relief as hereinafter provided.

13 **SIXTH CAUSE OF ACTION**

14 **(Employer's Negligent Hiring, Training, and/or Retention of Unfit Employee)**

15 27. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 26,
16 above.

17 28. The plaintiff is informed and believes, and based on that information and belief, alleges
18 that defendant ALAMEDA COUNTY MEDICAL CENTER. knew, or in the exercise of
19 reasonable care, should have known that DOES 1 to 50 were incompetent and unfit to perform
20 the job duties that they were hired to perform, and that the failure to perform these job duties
21 involved the risk of harm to others such as the plaintiff.

22 29. Defendant ALAMEDA COUNTY MEDICAL CENTER knew or should have known
23 that defendant DOES 1 to 50 were unfit to supervise, protect and prevent harm and violence
24 to those persons similarly situated as the plaintiff.

25 30. The negligence of the defendant's and each of them was the proximate cause of the
26 plaintiff's injuries.

27 WHEREFORE, Plaintiff requests relief as hereinafter provided.

28 / / / /

COMPLAINT FOR DAMAGES

- 5 -

PRAYER

WHEREFORE Plaintiff prays for judgment against defendants and each of them as follows:

1. Medical, hospital and related health care bills, according to proof;
2. Loss of earnings;
3. General damages;
4. For prejudgement and post judgment interest;
5. Costs of suit herein incurred;
6. For any other relief that is just and proper.

Dated: September 5, 2005

CHARLES SCHWARTZ, P.C.

By:

Charles Schwartz
Attorney for Plaintiff
LISA JOHNSON

COMPLAINT FOR DAMAGES

- 6 -

ENDORSED
FILED
ALAMEDA COUNTY

SEP 2 2005

CLERK OF THE SUPERIOR COURT
By DEBBIE SHRETS Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Conservatorship of the Person of
LISA JOHNSON
Conservatee.

No. 92-036235

ORDER APPOINTING
CONSERVATOR OF THE PERSON

(Welfare and Institutions Code
Sections 5360, et seq.)

The petition of LINDA L. KRETZ, Public Conservator, for appointment as conservator of the person of the above-named conservatee came on regularly to be heard this day. On proof being made to the satisfaction of the court, the court finds that notice of hearing has been given as required by law, that the allegations of the petition are true, that the conservatee is incompetent to refuse or consent to treatment which may be needed for remedying or preventing the recurrence of her being gravely disabled, that the proposed conservatee is gravely disabled as a result of mental disorder, that the conservatee is a resident of the County of Alameda, State of California, and that a conservator should be appointed of her person.

IT IS, THEREFORE, ORDERED, that:

1. SHARON TOTH, IMT ASSOCIATES, is appointed conservator of the person of the above-named conservatee and that Letters of Conservatorship issue to her forthwith.
2. The conservator shall have all those powers granted to conservators of the person listed in the Probate Code and the Welfare and Institutions Code.
3. The conservatee's privilege of possessing a license to operate a motor vehicle is revoked

1 as is the conservatee's right to enter into contracts exceeding \$58.00 in value. The conservatee may not
2 possess a firearm.

3 4. The conservator have the right to choose appropriate living arrangements for his conservatee
4 and to place him/her in a state hospital or other appropriate facility or treatment program as set forth in
5 Welfare and Institutions Code section 5858, immediate placement being authorized at VILLA FAIRMONT.

6 5. The conservatee is incapable of weighing the risks and the benefits of psychotropic
7 medications and is therefore incapable of giving informed consent. The conservator may require the
8 conservatee to receive treatment related specifically to remedying or preventing the recurrence of the
9 conservatee's grave disability, including giving consent to the use of psychotropic medications.

10 6. The conservatee is incapable of weighing the risks and the benefits of routine medical
11 treatment and is therefore incapable of refusing or consenting to routine medical treatment. The
12 conservator may consent to the conservatees' receiving routine medical treatment.

13 7. The conservator's appointment shall automatically terminate ^{February 25} ~~August 2~~, 2008, unless sooner
14 terminated by law.

15 Dated: September 2, 2005

16 **ROBERT K. KURTZ**
17 JUDGE OF THE SUPERIOR COURT
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ALTERNATIVE DISPUTE RESOLUTION
INFORMATION PACKAGE
Effective April 15, 2005

Instructions to Plaintiff / Cross-Complainant

In all general civil cases filed in the trial courts after June 30, 2001, the plaintiff is required to serve a copy of this ADR information package on each defendant.

California Rules of Court, Rule 201.9 (Excerpt)

(a) Each court must make available to the plaintiff, at the time of filing of the complaint, an Alternative Dispute Resolution (ADR) information package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes . . .

(2) Information about the ADR programs available in that court . . .

(3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA . . .

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) Court may make package available on Web site . . .

(c) The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

Introduction to Alternative Dispute Resolution

Did you know that most civil lawsuits settle without a trial? And did you know that there are a number of ways to resolve civil disputes without having to sue somebody? These alternatives to a lawsuit are known as alternative dispute resolution (also called ADR). The most common forms of ADR are mediation, arbitration, and neutral evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. In mediation, for example, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through court-connected and community dispute resolution programs and private neutrals.

Advantages of Alternative Dispute Resolution

ADR can have a number of advantages over a lawsuit:

- ADR can be speedier. A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ADR can save money. Court costs, attorney fees, and expert witness fees can be saved.
- ADR can permit more participation. With ADR, the parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ADR can be flexible. The parties can choose the ADR process that is best for them.
- ADR can be cooperative. In mediation, for example, the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ADR can reduce stress. There are fewer, if any, court appearances. And because ADR can be speedier, cheaper, and can create an atmosphere in which the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads. For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute instead of filing a lawsuit. Even when a lawsuit has been filed, ADR can be used before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of Alternative Dispute Resolution

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure and review for legal error by an appellate court.

There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

The neutral may charge a fee for his or her services.

If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Lawsuits must be brought within specified periods of time, known as statutes of limitations. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Rev 4/05

Three Common Types of Alternative Dispute Resolution

This section describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

Mediation

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved; the parties do.

Mediation is a cooperative process in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how they each see things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or has unequal bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

Arbitration

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records) rather than by testimony.

There are two kinds of arbitration in California: (1) Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and is normally binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. (2) "Judicial arbitration" takes place within the court process and is not binding unless the parties agree at the outset to be bound. A party to this kind of arbitration who does not like a judicial arbitration award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to decide on the outcome of their dispute themselves.

Neutral Evaluation

In evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments and makes an evaluation of the case. Each party gets a chance to present his or her side and hear the other side. This may lead to a settlement or at least help the parties prepare to resolve the dispute later on. If the neutral evaluation does not resolve the dispute, the parties may go to court or try another form of ADR.

Neutral evaluation, like mediation, can come early in the dispute and save time and money.

Neutral evaluation is most effective when a party has an unrealistic view of the dispute, when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Neutral evaluation may not be a good idea when it is too soon to tell what the case is worth or if the dispute is about something besides money, like a neighbor playing loud music late at night.

Mediation Services

222278 Redwood Road, Castro Valley, CA 94546

Phone: (510) 733-4940 fax: (510) 733-4945

Provides a panel of mediators to assist in the process of reaching an agreement in the areas of Neighborhood Disputes, Child Custody, Divorce, Parent/Teen Conflicts, Home Owners Association, Business, Real Estate, Employer/Employee, and Fremont Rent Increases.

East Bay Community Mediation

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Phone: (510) 548-2377 fax: (510) 548-4051

EBCM is a community-based mediation program created by the union of Berkeley Dispute Resolution Service and Conciliation Forums of Oakland. EBCM offers counseling on options and approaches to resolving a dispute, mediation, large-group conflict facilitation, and conflict resolution skills workshops.

Catholic Charities of the East Bay: Oakland - Main Office

433 Jefferson Street, Oakland, CA 94607

Phone: (510) 768-3100 fax: (510) 451-6998

Mediators are responsible for mediation sessions involving the youth, victim and family members to work towards a mutually agreeable restitution agreement. Also provide free workshops in anger management and mediation.

Center for Community Dispute Settlement

1789 Barcelona Street, Livermore, CA 94550

Phone: (925) 373-1035

Provides services in Tri-Valley for all of Alameda County. Program goals are to increase the number of court cases resolved, mediating small claims cases four days per week, and training youth in listening and conflict resolution skills.

California Lawyers for the Arts: Oakland Office

1212 Broadway Street, Suite 837, Oakland, CA 94612

Phone: (510) 444-6351 fax: (510) 444-6352

This program increases the resolution of arts related disputes such as artistic control, ownership of intellectual property, credit for work performed or produced and contract issues, through the use of alternative dispute resolution. It also increases the capacity to provide services for counseling, conciliation and administration of mediation, arbitration and meeting facilitation.

ALAMEDA COUNTY SUPERIOR COURT
ADR PROGRAM

ADR Program Administrator

Pursuant to California Rule of Court 1580.3, the presiding judge of the Superior Court of California, County of Alameda has designated Benjamin D. Stough, Berkeley Trial Court Administrator, to serve as ADR program administrator.

A Plaintiff may elect, the parties may stipulate or a judge may refer a case to Judicial Arbitration. The Judicial Arbitration Program Coordinator may be contacted at (510) 670-6646.

The Judicial Arbitration Process

Appointment of Arbitrator (must be appointed within 30 days after referral per CRC 1605).

- ⇒ Parties mailed list of five names from which to select. (List mailed within 5-10 business days after receipt of referral).
- ⇒ Each party may reject one of the names listed (10 calendar days per *CRC 1605a*)
- ⇒ The administrator randomly appoints the arbitrators from the names remaining on the list. If only one remains then is deemed appointed.

Assignment of Case (CRC 1605a(4))

- ⇒ Within 15 days of notice of the appointment, the arbitrator shall contact parties in writing about time, date, and place of the hearing. The parties shall receive at least 30 days notice prior to the hearing.

Hearings (CRC 1611)

- ⇒ Shall be scheduled so as to be completed not less than 35 days nor more than 90 days from the date the arbitrator was assigned. For good cause shown, the case may be continued an additional 90 days by the Case Management Judge.

Award of Arbitrator (CRC 1615b & c)

- ⇒ Arbitrator must file an award within 10 days after conclusion of the arbitration hearing. The court may allow 20 additional days upon application of arbitrator in cases of unusual length or complexity.
- ⇒ Within 30 days of the filing of the award the parties may file a Request for Trial de Novo. The clerk shall enter the award as a judgment after 30 days provided a Trial de Novo has not been filed.

Return of Case to Court

- ⇒ Upon Filing of Trial de Novo the action is returned to Case Management Judge for further proceedings. (*CRC 1616 & Local Rule 6.4*)
- ⇒ If Trial de Novo is not filed then judgment is entered and the Case Management Judge is notified (*CRC 1615c & Local Rule 6.6*)
- ⇒ If parties indicate a settlement then case is returned to Case Management Judge and case is continued 45 days for an Order to Show Cause RE filing a dismissal. (*Local Rule 6.6*)

Rev 4/05

EXHIBIT B

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO) :

ALAMEDA COUNTY MEDICAL CENTER, SCOTT ZELLER, M.D.,
 KURT BIEHL, M.D., JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N.,
 MADELYNE MARKLE, R.N., CEDRICK FROWNER,

DOES 1 TO 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTA DEMANDANDO EL DEMANDANTE) :

LISA JOHNSON, by and through
 her Conservator, Sharon Toth.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

ALAMEDA COUNTY SUPERIOR COURT
 1225 Fallon Street
 Oakland, CA 94612

CASE NUMBER:
 (Número del Caso):

RG05232747

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Charles Schwartz, Esq.
 2128 Broadway
 Oakland, CA 94612

Clerk, by

(Secretario)

, Deputy

(Adjunto)

DATE:

(Fecha) NOV 01 2005

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify) :

3. ☐ on behalf of (specify) :

under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify) :

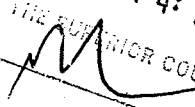
☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date) :

[SEAL]

ENDORSED
FILED
ALAMEDA COUNTY
2005 NOV -1 PM 4:14
CLERK OF THE SUPERIOR COURT
BY  DEPUTY

1 Charles Schwartz, (State Bar #49769)
2 CHARLES SCHWARTZ, P.C.
3 2128 Broadway
Oakland, CA 94612
(510) 986-1300

4 Attorneys for Plaintiff
5 LISA JOHNSON
6
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA
(NORTHERN DIVISION)

11 (Unlimited Jurisdiction)

12 LISA JOHNSON, by and through
13 her Conservator, Sharon Toth,

14 Plaintiff,

15 v.

16 ALAMEDA COUNTY MEDICAL
17 CENTER, SCOTT ZELLER, M.D.,
18 KURT BIEHL, M.D., JEANETTE
19 COTANCHE, R.N., LEONI ALFONSO, R.N.,
20 MADELYNE MARKLE, R.N., CEDRICK
FROWNER,
DOES 1 to 50, inclusive,

Defendants.

ACTION NO.: RG05232747

FIRST AMENDED
COMPLAINT FOR DAMAGES

21 Plaintiff LISA JOHNSON alleges as follows:

22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 1. Defendant CEDRICK FROWNER is an individual, and at all times herein mentioned,
24 is a resident of Alameda County, California.

25 2. Defendant ALAMEDA COUNTY MEDICAL CENTER is, and at all times herein
26 mentioned, a public entity organized and existing under the laws of the State of California.

27 3. At all times herein alleged, defendant SCOTT ZELLER, M.D. was the Chief of
28 Psychiatric Emergency Services, KURT BIEHL, M.D., was the Chair, Department of

FIRST AMENDED COMPLAINT FOR DAMAGES

1 Psychiatry and Chief, Inpatient Psychiatry, LEONI ALFONSO, R.N., was the Interim
2 Psychiatric Emergency Services Nurse Manager, JEANETTE COTANCHE, R.N. was the
3 Chief Quality Officer, MADELYNE MARKLE, R.N. was staff nurse. Each of the above
4 named individual defendants were employees of defendant ALAMEDA COUNTY
5 MEDICAL CENTER, conducting their business at the John George Psychiatric Pavilion, a
6 facility owned and operated by defendant ALAMEDA COUNTY MEDICAL CENTER.

7 3. Defendants Doe 1 through Doe 50, inclusive, are sued herein under fictitious names.
8 Their true names and capacities are unknown to the plaintiff. When their true names and
9 capacities are ascertained, plaintiff will amend this complaint by inserting their true names
10 and capacities. The plaintiff is informed and believes that each fictitiously named defendant
11 is responsible for the matters herein alleged.

12 4. The plaintiff is informed and believes and thereon alleges that at all times herein
13 mentioned, each defendant, including all defendants sued under fictitious names, was the
14 agent and employee of each of the remaining defendants, and in doing the things hereinafter
15 alleged, was acting within the course and scope of this agency or employment.

16 5. The plaintiff is informed and believes that on or about June 17, 2005 defendant
17 CEDRICK FROWNER was housed at the John George Psychiatric Pavilion pursuant to an
18 emergency psychiatric evaluation under the custody and control of defendants ALAMEDA
19 COUNTY MEDICAL CENTER, SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI
20 ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and
21 DOES 1 to 50.

22 6. The plaintiff is informed and believes that defendant CEDRICK FROWNER had a
23 history of prior brutality and criminal convictions and was known to defendants ALAMEDA
24 COUNTY MEDICAL CENTER, SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI
25 ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and
26 DOES 1 to 50 as an individual prone to violent and assaultive behavior.

27 7. On or about June 17, 2005, at approximately 5:00 a.m., the plaintiff was housed at the
28 John George Psychiatric Pavilion pursuant to an emergency psychiatric evaluation under the

1 custody and control of defendants ALAMEDA COUNTY MEDICAL CENTER, SCOTT
2 ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE,
3 R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50.

4 8. At said time and place, the defendants, ALAMEDA COUNTY MEDICAL CENTER,
5 SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE
6 COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50, and each of them,
7 negligently and carelessly failed to secure the door to the plaintiff's room and negligently and
8 carelessly failed to monitor and secure the whereabouts of defendant CEDRICK FROWNER
9 so that defendant CEDRICK FROWNER was allowed access into the plaintiff's room.

10 9. Once inside the plaintiff's room defendant CEDRICK FROWNER sexually assaulted
11 the sleeping plaintiff by putting his erect penis into the plaintiff's mouth. Once the plaintiff
12 was awake, he attempted to engage in genital intercourse with her.

13 10. As a result of the acts of defendant CEDRICK FROWNER and the negligence and
14 carelessness of the defendant ALAMEDA COUNTY MEDICAL CENTER, and DOES 1 to
15 50, as alleged, the plaintiff suffered personal injury and severe emotional distress.

16 11. On July 21, 2005, the plaintiff submitted a claim of damages to defendant ALAMEDA
17 COUNTY MEDICAL CENTER for the injuries alleged in this complaint. Defendant
18 ALAMEDA COUNTY MEDICAL CENTER rejected the plaintiff's claim of damages by
19 operation of law on September 5, 2005.

20 12. On September 2, 2005, Sharon Toth, a principal in IMT Associates, was appointed as
21 Conservator of the plaintiff with the authority to bring this action in behalf of the plaintiff.

22 FIRST CAUSE OF ACTION

23 (Sexual Battery-Civil Code §1708.5)

24 13. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 12,
25 above.

26 14. The above conduct by defendant CEDRICK FROWNER is a violation of Civil Code
27 §1708.5 in that CEDRICK FROWNER acted with the intent to cause a harmful or offensive
28 contact by the use of his intimate part and a sexually offensive contact with the plaintiff

1 directly occurred. Defendant CEDRICK FROWNER's conduct also caused the plaintiff to
2 suffer imminent apprehension of such a contact occurring.

3 15. At no time did the plaintiff consent to any of the acts of defendant CEDRICK
4 FROWNER alleged in paragraph 9, above.

5 WHEREFORE, Plaintiff requests relief as hereinafter provided.

6 **SECOND CAUSE OF ACTION**

7 **(Assault)**

8 16. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 15
9 above.

10 17. In doing the acts as alleged above, defendant CEDRICK FROWNER intended to cause
11 or to place the plaintiff in apprehension of a harmful or offensive contact with her person.

12 18. As a result of defendant CEDRICK FROWNER's acts as alleged above, the plaintiff,
13 in fact, was placed in great apprehension of a harmful or offensive contact with her person.

14 WHEREFORE, Plaintiff requests relief as hereinafter provided.

15 **THIRD CAUSE OF ACTION**

16 **(Intentional Infliction of Emotional Distress)**

17 19. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 18
18 above.

19 20 Defendant CEDRICK FROWNER's conduct was intentional, outrageous, malicious
20 and done with ill will and with the intent of causing the plaintiff to suffer humiliating mental
21 anguish, and emotional and physical distress.

22 21. Defendant CEDRICK FROWNER's conduct was so severe and outrageous that as a
23 proximate result Plaintiff suffered humiliation, mental anguish and emotional and physical
24 distress.

25 WHEREFORE, Plaintiff requests relief as hereinafter provided.

26 / / / /

27 / / / /

28 / / / /

FOURTH CAUSE OF ACTION

(Negligence- Dangerous Condition of Property)

22. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 21 above.

23. Defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 owed a duty to the plaintiff to provide secure facilities so that the plaintiff would not be subject to harm from other patients. The defendants and each of them carelessly and negligently breached their duty to the plaintiff by negligently and carelessly failing to secure the door to the plaintiff's room, creating a dangerous condition of property and allowing defendant CEDRICK FROWNER access to the plaintiff's room while she slept and by allowing defendant CEDRICK FROWNER to engage in the conduct alleged in paragraph 9, above.

24. As a result of the carelessness and negligence of the defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 the plaintiff suffered injuries and damages as alleged herein.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

(Negligence per Se - Violation of Statutory Duty, Government Code §855)

25. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 24 above.

26. On September 12, 2005, the Department of Health Services informed the plaintiff by letter that the Licensing & Certification Program had investigated the circumstances surrounding the incident alleged by the plaintiff herein and had concluded and reported the following violation:

California Code of Regulations

Title 22. Social Security

Division 5. Licensing and Certification of Health Facilities, Home Health Agencies,

Clinics, and Referral Agencies

Chapter 1. General Acute Care Hospitals Article

Article 8. Physical Plant

§§ 22:70837. General Safety and Maintenance..

(a) The hospital shall be clean, sanitary and in good repair at all times.

Maintenance shall include provision and surveillance of services and procedures for the safety and well-being of patients, personnel and visitors.

27. The finding of a violation of such regulation, designed to protect that class of people which included the plaintiff, is negligence per se and establishes ALAMEDA COUNTY MEDICAL CENTER's liability pursuant to Government Code §855. (See Exhibit A, attached hereto, September 12, 2005 letter and attached report, seven pages.)

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION

(Respondeat Superior)

28. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 27 above.

29. At all times herein mentioned, defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 were the agents and employees of defendant ALAMEDA COUNTY MEDICAL CENTER and, in doing the acts herein described and referred to, were acting in the course and within the scope of their authority as agents and employees, and in the transaction of the business of the ALAMEDA COUNTY MEDICAL CENTER. Defendant ALAMEDA COUNTY MEDICAL CENTER is therefore, liable to the plaintiff for the acts of defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 as heretofore alleged.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

/ / / /

SEVENTH CAUSE OF ACTION

(Employer's Negligent Hiring, Training, and/or Retention of Unfit Employee)

30. The plaintiff refers to and incorporates herein by reference paragraphs 1 through 29 above.

31. The plaintiff is informed and believes, and based on that information and belief, alleges that defendant ALAMEDA COUNTY MEDICAL CENTER knew, or in the exercise of reasonable care, should have known that SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 were incompetent and unfit to perform the job duties that they were hired to perform, and that the failure to perform these job duties involved the risk of harm to others such as the plaintiff.

32. Defendant ALAMEDA COUNTY MEDICAL CENTER knew or should have known that defendant SCOTT ZELLER, M.D., KURT BIEHL, M.D., LEONI ALFONSO, R.N., JEANETTE COTANCHE, R.N., MADELYNE MARKLE, R.N. and DOES 1 to 50 were unfit to supervise, protect and prevent harm and violence to those persons similarly situated as the plaintiff.

33. The negligence of the defendant's and each of them was the proximate cause of the plaintiff's injuries.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

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PRAYER

WHEREFORE Plaintiff prays for judgment against defendants and each of them as follows:

1. Medical, hospital and related health care bills, according to proof;
2. Loss of earnings;
3. General damages;
4. For prejudgement and post judgment interest;
5. Costs of suit herein incurred;
6. For any other relief that is just and proper.

Dated: October 27, 2005

CHARLES SCHWARTZ, P.C.

By: _____

Charles Schwartz
Attorney for Plaintiff
LISA JOHNSON

EXHIBIT A

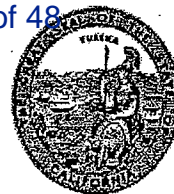
Case 4:07-cv-03395-CW Document 1-2 Filed 06/28/2007 Page 28 of 48

State of California—Health and Human Services Agency
Department of Health Services



California
Department of
Health Services

SANDRA SHEWRY
Director



ARNOLD SCHWARZENEGGER
Governor

September 12, 2005

Ms. Lisa Johnson
27615 Madrid Avenue
Hayward, CA 94544

Dear Ms. Johnson:

FACILITY: John George Pavilion/highland D/p Aph
COMPLAINT NUMBER: CA00052170
COMPLAINANT REFERENCE NUMBER, if applicable:

- The Licensing & Certification Program (L&C) within the California Department of Health Services has completed an investigation of your complaint concerning patient care and services at John George Pavilion/highland D/p Aph. L&C made an unannounced visit to the facility on June 20 and June 23, 2005 and investigated circumstances surrounding your complaint through direct observation, interviews, and/or review of documents. Through this process we have substantiated your complaint.

The basis for this finding is as follows:

L&C validated the complaint allegation during the onsite visit. Pursuant to our investigation, L&C sent the facility a statement of deficiencies, and the facility submitted an acceptable Plan of Correction to the Department (see enclosed form).

If L&C issued a statement of deficiencies form, the facility was required to submit a plan of correction that met federal and state requirements. The same federal form, known as an "CMS 2567," is used for both purposes. If L&C substantiated your complaint allegation, we have enclosed a copy of the final CMS 2567 for your review.

Current law authorizes L&C to make a **final** determination when investigating complaint allegations in psychiatric hospitals. Our final decision is based on onsite investigation

including direct observations, interviews, and review of documents. This decision is not subject to any further administrative review.

Thank you for sharing your concerns, we will continue our efforts to ensure that patients receive care, services and reside in an environment in accordance with their needs and preference.

Should you have any questions, please contact Patsy Stubbs, Health Facilities Evaluator Supervisor, at (510) 620-5800.

Sincerely,

Patsy Stubbs NW HFES

for Barbara Gagne
District Administrator

Enclosure [CMS 2567]

California Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA140000422	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 06/28/2005
---	--	--	---

NAME OF PROVIDER OR SUPPLIER JOHN GEORGE PAVILION/HIGHLAND D/P APH	STREET ADDRESS, CITY, STATE, ZIP CODE 2060 FAIRMONT DRIVE SAN LEANDRO, CA 94578	OK 8/10/05
---	---	------------

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X COMF DA
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E 000	Initial Comments The following represents the findings of the Department of Health Services during a complaint investigation for Complaints CA00052170 and CA00052240. The investigation was limited to the specific components of the complaint and the findings do not reflect a complete investigation of the facility. Representing the Department of Health Services: Judith Whitman HFEN.	E 000		
E1570	T22 DIV5 CH1 ART6-70577(k)(1)(l) Psychiatric Unit General Requirements (l) All other rights as provided by law or regulations. This RULE: is not met as evidenced by: 70577 (k) (l) Psychiatric Unit General Requirements - Patient Rights A0057 Federal Regulation: The patient has a right to receive care in a safe setting. Based on observation, staff interview and record review, the hospital failed to ensure that Patient A received care in the hospital in a safe environment. This allowed the patient to be placed in a dangerous situation. Findings are: Medical records for Patient A, the complainant, were reviewed on 6/20/05 at 3:45 p.m. According to the medical record, Patient A was evaluated in the Psychiatric Emergency Service (PES) on 6/16/05 at 2:10 pm. Patient A was	E1570	T22 DIV5 CH1 ART6-70577 (k)(1)(l) Psychiatric Unit General Requirements E 1570 Summary of Findings: The hospital failed to ensure that Patient A received care in the hospital in a safe environment. Corrective Action(s): The lock on the handle worked, however the alignment was off, such that the door did not latch when closed. The handle could not be turned, but the door could be pulled open without turning the locked handle. The striker plate has been realigned such that the door now latches when it is shut. Monitoring: All doors on PES will be checked not only for proper locking, but proper latching now as well. This will be done on daily Environment of Care rounds.	

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE TITLE (X8) DA

Jonathan Citron COO

8/9/05

California Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA140000422	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 06/28/2005
--	---	--	--

NAME OF PROVIDER OR SUPPLIER JOHN GEORGE PAVILION/HIGHLAND D/P APH	STREET ADDRESS, CITY, STATE, ZIP CODE 2060 FAIRMONT DRIVE SAN LEANDRO, CA 94578
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLI DATE
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E1570

Continued From Page 1

delusional and grandiose, with disorganized thoughts. Her behavior was loud, demanding and irritated. She was in room 14 at 2:00 a.m.. This was the location of the alleged assault. The documentation noted that she was in the room with the door unlocked. This meant that the door was locked to enter but unlocked to exit. She was on 15 minute checks. At 5:05 a.m. documentation stated that a male patient went into her room and security and nursing staff responded immediately when she screamed. Psychiatrist 1 was called, saw her and documented " pt. (patient) reports that she was sleeping and felt something being pushed into her mouth. " On 6/17/05 at 10:50 a.m. she was transferred to the ED (Emergency Department) for a SART examination..

In an interview with Staff S on 6/23/05 at 8:15 a.m., which took place in PES, he stated that he had seen Patient B come out of his room (Room 13), which was right next to the room occupied by Patient A (Room 14). He demonstrated the location of the rooms. He went directly to the bathroom and tried the door which was locked. He then locked into Room 14 and pulled on the handle. Staff S stated " It should have been locked but it opened. He went inside the room and 3 or 4 seconds later I heard a crying female, not loud. As the staff entered the room, he saw Patient B standing by the head of the bed, his pajama bottoms pulled down mid thigh with an erect penis. The female patient was sitting on the bed with her head down. She was sobbing and did not say anything. "

E1570

Persons Responsible:

Scott Zeller M.D., Chief, PES; Kurt Biehl M.D., Chair, Department of Psychiatry and Chief, Inpatient Psychiatry; Madelyne Markle RN, ADON, Leoni Alfonso RN, Interim PES Nurse Manager; Jeanette Cotanche RN, Chief Quality Officer.

Completion Date: June 24, 2005 and ongoing.

E2216

T22 DIV5 CH1 ART7-70749(a)(6)(A) Patient Health Record Content

(A) Concise and accurate record of nursing care

E2216

California Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA140000422	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 06/28/2005
NAME OF PROVIDER OR SUPPLIER JOHN GEORGE PAVILION/HIGHLAND D/P APH		STREET ADDRESS, CITY, STATE, ZIP CODE 2060 FAIRMONT DRIVE SAN LEANDRO, CA 94578		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X) COMF DA
E2216	<p>Continued From Page 2</p> <p>administered.</p> <p>This RULE: is not met as evidenced by: 70749 (a) (6) (A) Patient Health Record Content</p> <p>Based on staff interview and document review, the hospital failed to ensure that documentation in the medical record was accurate and reflected the exact circumstances. A late entry did not record the date and time of the entry and /or when the circumstances documented occurred. These instances could give the wrong information which may cause incorrect conclusions on the part of the reader and prove detrimental for the patient.</p> <p>Findings are:</p> <p>1. Medical Record for Patient A reviewed on 6/20/05 revealed that in the documentation of the PES " Exit Disposition " dated 6/16/05 by Physician N, he determined that Patient A was on a 5150 for Grave Disability. The discharge plan stated that " the patient was sexually assaulted in her seclusion room after a male patient managed to pull open a locked seclusion room door and then attempted to place his penis in her mouth ". In an interview with Physician N on 6/23/05 at 9:05 a.m. he was asked if he had evidence that the sexual assault actually took place as he had documented. He stated that Psychiatrist 1 was quite disturbed by her interview with Patient A and related the allegations to him.</p> <p>On 6/23/05 at 9:30 a.m. Psychiatrist 1 was interviewed over the telephone. She stated she had spoken to Patient A immediately after the incident. She had told her that at approximately 5:30 a.m. she had been asleep and had a sense</p>	E2216	<p>T22 DIV5 CH1 ART7-70749 (a)(6)(A) Patient Health Record Content E2216</p> <p>Summary of Findings: The hospital failed to ensure that documentation in the medical record was accurate and reflected the exact circumstances. A late entry did not record the date and time of the entry and/or when the circumstances documented occurred.</p> <p>Corrective Action(s):</p> <ol style="list-style-type: none"> 1. The Medical Director conducted an individualized in-service education conference with respect to proper documentation with Physician N. Additionally, the Medical Director conducted a similar in-service presentation and discussion with the Medical Staff at their meeting following the incident. 2. Nursing management has reviewed the Nursing policy and conducted in-service education on proper late entry documentation. To further enhance training, the insurance carrier for ACMC will provide classes for physicians and nurses in September 2005 on the same subject. <p>Monitoring: Documentation will be monitored through chart audits.</p> <p>Persons Responsible: Scott Zeller M.D., Chief, PES; Kurt Biehl M.D., Chair Department of Psychiatry and Chief, Inpatient Psychiatry; Madelyne Markle RN,</p>	

California Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA140000422	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED 06/28/2005
NAME OF PROVIDER OR SUPPLIER JOHN GEORGE PAVILION/HIGHLAND D/P APH			STREET ADDRESS, CITY, STATE, ZIP CODE 2060 FAIRMONT DRIVE SAN LEANDRO, CA 94578		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID. PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPL DAT
E2216	Continued From Page 3 of choking on something and woke up with something in her mouth. She started screaming. She was upset about it but not devastated. Psychiatrist 1 stated she did not have any proof this happened except for Patient A's statements. 2. Patient A 's Medical Record was reviewed again on 6/23/05 and revealed a late entry dated and timed " 6/17/05 0645 " in the date and time column. In the section headed "Notes " was written in brackets " late entry ". " Pt (patient) was interviewed by Deputy J. staff was also interviewed as was security. Deputy J also interviewed the pt. making the assault claim and also the pt who she stated made the assault ". There was no indication if the time and date documented referred to when the entry was made or when these interviews took place. The Policy and Procedure was not followed. According to the Policy and Procedure Titled: Documentation - Progress Notes: " Entry made the following day: On a new Progress Record write " Addendum to charting of (date) ". This was not done. " Enter the time the entry should have been made in the time column and circle the time. " This was not done. " Sign ...and the time and date the entry was actually made. " This was not done.	E2216	ADON; Jeanette Cotanche RN, Chief Quality Officer. Completion Date: June 21, 2005 and ongoing.		
E2348	T22 DIV5 CH1 ART8-70837(a) General Safety and Maintenance (a) The hospital shall be clean, sanitary and in good repair at all times. Maintenance shall include provision and surveillance of services and procedures for the safety and well-being of patients, personnel and visitors.	E2348	T 22 DIV5 CH1 ART8-70837 (a) General Safety and Maintenance E2348 Summary of Findings: The hospital failed to ensure that the locking system on the door of seclusion room was working appropriately.		

California Department of Health Services

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA140000422	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 06/28/2007
NAME OF PROVIDER OR SUPPLIER JOHN GEORGE PAVILION/HIGHLAND D/P APH		STREET ADDRESS, CITY, STATE, ZIP CODE 2060 FAIRMONT DRIVE SAN LEANDRO, CA 94578		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(C) COM. D/
E2348	<p>Continued From Page 4</p> <p>This RULE: is not met as evidenced by: 70837 (a) General Safety and Maintenance</p> <p>Based on observation and staff interview, the hospital failed to ensure that the locking system on the door of seclusion room #14 was working appropriately. This led to a male patient gaining access to a female patient while she was sleeping.</p> <p>Findings are:</p> <p>On 6/23/05 at 8:15 a.m. during a visit to PES, the door to room 14 was tested by pulling on the handle and it opened. The mechanism should have locked, preventing anyone from entering the room. The ADON stated that the door had been fixed after the incident. She stated she would call engineering again.</p> <p>In an interview with Staff S on 6/23/05 at 8:15 a.m., which took place in PES, he stated that he had seen Patient B come out of his room (Room 13), which was right next to the room occupied by Patient A (Room 14). He demonstrated where the rooms were located. Patient B went directly to the bathroom and tried the door which was locked. He then looked into Room 14 and pulled on the handle. Staff S stated "It should have been locked but it opened. He went inside the room and 3 or 4 seconds later I heard a crying female.</p>	E2348	<p>Corrective Action(s): The lock on the handle worked, however the alignment was off, such that the door did not latch when closed. The handle could not be turned, but the door could be pulled open without turning the locked handle. The striker plate has been realigned such that the door now latches when it is shut.</p> <p>Monitoring: All doors on PES will be checked not only for proper locking, but proper latching now as well. This will be done on daily Environment of Care rounds</p> <p>Persons Responsible: Scott Zeller M.D., Chief, PES; Kurt Biehl M.D., Chair, Department of Psychiatry and Chief, Inpatient Psychiatry; Madelyne Markle RN, ADON, Leoni Alfonso RN, Interim PES</p>	

PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the County of Alameda, State of California. I am over 18 years of age and not a party to the within action. My business address is 2128 Broadway, Oakland, California 94612.

On the date signed hereunder, I served the within **FIRST AMENDED COMPLAINT FOR DAMAGES** and **FIRST AMENDED SUMMONS** by placing a true copy thereof, enclosed in a sealed envelope, with first class postage fully prepaid thereon, in the United States Mail at Oakland, California, addressed as follows:

Gregory J. Rockwell, Esq.
BOORNAZIAN, JENSEN & GARTHE
555 12th Street, Suite 1800
P.O. Box 12925
Oakland, CA 94604-2925

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on November 2, 2005 at Oakland, California.


Charles Schwartz

EXHIBIT C

GREGORY J. ROCKWELL, ESQ. (SBN 67305)
BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation/File #24266
555 12th Street, Suite 1800
P. O. Box 12925
Oakland, CA 94604-2925
Telephone: (510) 834-4350
Facsimile: (510) 839-1897

Attorneys for Defendant
ALAMEDA COUNTY MEDICAL
CENTER

ENDORSED
FILED
ALAMEDA COUNTY
NOV 30 2005
CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNIE Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

(NORTHERN DIVISION)

LISA JOHNSON, by and through her
Conservator, Sharon Toth,

Plaintiff,

vs.

ALAMEDA COUNTY MEDICAL CENTER,
CEDRICK FROWNER, DOES 1 to 50,
inclusive,

Defendants.

Case No.: RG05232747

**DEFENDANT ALAMEDA COUNTY
MEDICAL CENTER'S ANSWER TO
FIRST AMENDED COMPLAINT FOR
DAMAGES**

Complaint Filed: September 15, 2005

COMES NOW defendant ALAMEDA COUNTY MEDICAL CENTER, and for its
answer to the unverified complaint of plaintiff on file herein, admits, denies and alleges as follows:

Under the provisions of §431.30(d) of the California Code of Civil Procedure, this
answering defendant denies each and every, all and singular, generally and specifically, the
allegations contained in said complaint, and further denies that plaintiff has been damaged in any
sum or sums, or at all, by reason of any act or omission on the part of this answering defendant.

**AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff
was herself careless and negligent in and about the matters alleged in the complaint, and that said

1 carelessness and negligence on plaintiff's own part proximately contributed to the happening of
 2 the incident and to the injuries, loss and damages complained of, if any there were, and said
 3 negligence shall diminish plaintiff's recovery herein in direct proportion to the extent of such
 4 negligence under the doctrine of comparative negligence.

5 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 6 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 7 **THEREOF**, this answering defendant is informed and believes and thereon alleges that prior to
 8 and at the time of the occurrence of the alleged incident which is the subject of plaintiff's
 9 complaint, plaintiff had knowledge, express or implied, of those matters alleged in the complaint;
 10 that plaintiff did with the above-mentioned knowledge voluntarily and of her own free will place
 11 herself in an unsafe and dangerous position, and by reason thereof said plaintiff assumed the risk
 12 and all risks ordinarily incident thereto; and said assumption of risk bars recovery herein.

13 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 14 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 15 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff
 16 failed to timely comply with the claim presentation requirements of the California Government
 17 Code and/or failed to file said complaint within the time delineated by all applicable statutes of
 18 limitations, including, but not limited to Code of civil procedure §340.5 and Government Code
 19 §945.6.

20 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 21 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 22 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff's
 23 unverified complaint is barred by all governmental immunities, including, but not limited to,
 24 Government Code §§815.2, 820.2, 830.6, 835.4, 840.6, 854.8, 855.4, 855.6 855.8, 856 and 856.4.

25 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 26 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 27 **THEREOF**, this answering defendant is informed and believes and thereon alleges that neither the
 28

1 complaint nor any of its alleged causes of action state facts sufficient to constitute a cause of action
2 against this answering defendant.

3 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
4 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
5 **THEREOF**, this answering defendant is informed and believes and thereon alleges that at all
6 times herein mentioned, prior to and at the time of the medical treatment referred to in the
7 plaintiff's complaint, plaintiff was fully informed about and aware of all risks and potential
8 complications associated with said treatment, including all risks and potential complications
9 associated with medications, transfusion of blood products, grafting of tissue, surgical procedures
10 and all other phases and aspects of said medical treatment, and with said information and
11 knowledge, did knowingly, voluntarily and willingly consent and agree to said medical treatment.

12 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
13 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
14 **ACTION THEREOF**, this answering defendant is informed and believes and thereon alleges that
15 all procedures performed by defendant were reasonable and necessary to the plaintiff's health and
16 well-being, and were all properly performed.

17 **AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
18 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
19 **ACTION THEREOF**, this answering defendant is informed and believes and thereon alleges that
20 in the event this answering defendant is found to be liable (which supposition is denied and merely
21 stated for the purpose of the affirmative defense), at the time of trial of this matter said defendant
22 may elect to introduce evidence of any amounts paid or payable, if any, as a benefit to plaintiff
23 pursuant to Civil Code §3333.1.

24 **AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
25 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
26 **THEREOF**, this answering defendant is informed and believes and thereon alleges that in the
27 event this answering defendant is found to be liable (which supposition is denied and merely stated
28

1 for the purpose of this affirmative defense), the damages for non-economic losses shall not exceed
2 the amount specified in Civil Code §3333.2.

3 **AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
4 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
5 **THEREOF**, this answering defendant is informed and believes and thereon alleges that in the
6 event this answering defendant is found to be liable (which supposition is denied and merely stated
7 for the purpose of this affirmative defense), this defendant may elect to have future damages, if in
8 excess of the amount specified in Code of Procedure §667.7, paid periodically in whole or in part,
9 as specified in Code of Civil Procedure §667.7.

10 **AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
11 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
12 **ACTION THEREOF**, this answering defendant is informed and believes and thereon alleges that,
13 the injuries, losses and damages, if any there were, allegedly sustained by plaintiff were
14 proximately caused by the conduct of other persons or entities who are not the agents of this
15 defendant, and by reason thereof, any liability of defendant herein shall be diminished, offset or
16 abated by reason of said conduct.

17 **WHEREFORE**, this answering defendant prays as follows:

- 18 1. That plaintiff take nothing by way of her complaint and that this answering
19 defendant be dismissed hence;
- 20 2. For reasonable attorneys' fees;
- 21 3. For costs of suit incurred herein; and
- 22 4. For such other and further relief as the Court deems just and proper.

23 DATED: November 30, 2005.

24 BOORNAZIAN, JENSEN & GARTHE

25 By: 

26 GREGORY J. ROCKWELL, ESQ.
27 Attorneys for Defendant ALAMEDA
28 COUNTY MEDICAL CENTER

PROOF OF SERVICE BY MAIL
(C.C.P. SECTIONS 1013(a) -2015.5)

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

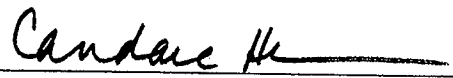
I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of **DEFENDANT ALAMEDA COUNTY MEDICAL CENTER'S ANSWER TO FIRST AMENDED COMPLAINT FOR DAMAGES**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Charles Schwartz, Esq.
2128 Broadway
Oakland, CA 94612
Tel: (510) 986-1300

Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on November 30, 2005.


Candace Hankins

24266364693

EXHIBIT D

**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 27 2008

ARTHUR SIMS, Exec. Off./Clerk

By Sandra Cole

GREGORY J. ROCKWELL, ESQ. (SBN 67305)
BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation/File #24266
555 12th Street, Suite 1800
P. O. Box 12925
Oakland, CA 94604-2925
Telephone: (510) 834-4350
Facsimile: (510) 839-1897

Attorneys for Defendants
ALAMEDA COUNTY MEDICAL CENTER,
SCOTT ZELLER, M.D., KURT BIEHL, M.D.,
JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N.,
MADELYNE MARKLE, R.N.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA (NORTHERN DIVISION)

LISA JOHNSON, by and through her
Conservator, Sharon Toth,

Plaintiff,

vs.

ALAMEDA COUNTY MEDICAL CENTER,
SCOTT ZELLER, M.D., KURT BIEHL, M.D.,
JEANETTE COTANCHE, R.N., LEONI
ALFONSO, R.N., MADELYNE MARKLE,
R.N., CEDRICK FROWNER, DOES 1 to 50,
inclusive,

Defendants.

) Case No.: RG05232747

) **ANSWER TO FIRST AMENDED**
) **COMPLAINT FOR DAMAGES OF**
) **DEFENDANTS SCOTT ZELLER, M.D.,**
) **KURT BIEHL, M.D., JEANETTE**
) **COTANCHE, R.N., LEONI ALFONSO,**
) **R.N. and MADELYNE MARKLE, R.N.,**
) **employees of defendant ALAMEDA**
) **COUNTY MEDICAL CENTER, a public**
) **hospital authority**

) Complaint Filed: September 15, 2005

COME NOW defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D., JEANETTE
COTANCHE, R.N., LEONI ALFONSO, R.N. and MADELYNE MARKLE, R.N., employees of
defendant ALAMEDA COUNTY MEDICAL CENTER, a public hospital authority, and for their
answer to the unverified first amended complaint of plaintiff on file herein, admit, deny and allege
as follows:

Under the provisions of §431.30(d) of the California Code of Civil Procedure, theses
answering defendants deny each and every, all and singular, generally and specifically, the
allegations contained in said complaint, and further deny that plaintiff has been damaged in any
sum or sums, or at all, by reason of any act or omission on the part of these answering defendants.

-1-

ANSWER TO FIRST AMENDED COMPLAINT;

Lisa Johnson v. Alameda County Medical Center, et al., Alameda Sup. #RG05232747

EXHIBIT D

1 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
2 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
3 **THEREOF**, these answering defendants are informed and believe and thereon allege that plaintiff
4 was herself careless and negligent in and about the matters alleged in the complaint, and that said
5 carelessness and negligence on plaintiff's own part proximately contributed to the happening of
6 the incident and to the injuries, loss and damages complained of, if any there were, and said
7 negligence shall diminish plaintiff's recovery herein in direct proportion to the extent of such
8 negligence under the doctrine of comparative negligence.

9 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
10 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
11 **THEREOF**, these answering defendants are informed and believe and thereon allege that, prior to
12 and at the time of the occurrence of the alleged incident which is the subject of plaintiff's
13 complaint, plaintiff had knowledge, express or implied, of those matters alleged in the complaint;
14 that plaintiff did with the above-mentioned knowledge voluntarily and of her own free will place
15 herself in an unsafe and dangerous position, and by reason thereof said plaintiff assumed the risk
16 and all risks ordinarily incident thereto; and said assumption of risk bars recovery herein.

17 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
18 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
19 **THEREOF**, these answering defendants are informed and believe and thereon allege that plaintiff
20 failed to timely comply with the claim presentation requirements of the California Government
21 Code and/or failed to file said complaint within the time delineated by all applicable statutes of
22 limitations, including, but not limited to Code of Civil Procedure §340.5 and Government Code
23 §945.6.

24 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
25 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
26 **THEREOF**, these answering defendants are informed and believe and thereon allege that
27 plaintiff's unverified complaint is barred by all governmental immunities, including, but not
28

1 limited to, Government Code §§815.2, 820.2, 830.6, 835.4, 840.6, 854.8, 855.4, 855.6 855.8, 856
2 and 856.4.

3 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
4 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
5 **THEREOF**, these answering defendants are informed and believe and thereon allege that neither
6 the complaint nor any of its alleged causes of action state facts sufficient to constitute a cause of
7 action against these answering defendants.

8 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
9 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
10 **THEREOF**, these answering defendants are informed and believe and thereon allege that, prior to
11 and at the time of the medical treatment referred to in the plaintiff's complaint, plaintiff was fully
12 informed about and aware of all risks and potential complications associated with said treatment,
13 including all risks and potential complications associated with medications, transfusion of blood
14 products, grafting of tissue, surgical procedures and all other phases and aspects of said medical
15 treatment, and with said information and knowledge, did knowingly, voluntarily and willingly
16 consent and agree to said medical treatment.

17 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
18 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
19 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege
20 that all procedures performed by defendants were reasonable and necessary to the plaintiff's health
21 and well-being, and were all properly performed.

22 **AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
23 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
24 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege
25 that in the event these answering defendants are found to be liable (which supposition is denied
26 and merely stated for the purpose of the affirmative defense), at the time of trial of this matter said
27 defendants may elect to introduce evidence of any amounts paid or payable, if any, as a benefit to
28

1 plaintiff pursuant to Civil Code §3333.1.

2 AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
3 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
4 THEREOF, these answering defendants are informed and believes and thereon allege that in the
5 event these answering defendants are found to be liable (which supposition is denied and merely
6 stated for the purpose of this affirmative defense), the damages for non-economic losses shall not
7 exceed the amount specified in Civil Code §3333.2.

8 AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
9 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
10 THEREOF, these answering defendants are informed and believe and thereon allege that in the
11 event these answering defendants are found to be liable (which supposition is denied and merely
12 stated for the purpose of this affirmative defense), these defendants may elect to have future
13 damages, if in excess of the amount specified in Code of Procedure §667.7, paid periodically in
14 whole or in part, as specified in Code of Civil Procedure §667.7.

15 AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
16 THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF
17 ACTION THEREOF, these answering defendants are informed and believe and thereon allege
18 that, the injuries, losses and damages, if any there were, allegedly sustained by plaintiff were
19 proximately caused by the conduct of other persons or entities who are not the agents of these
20 defendants, and by reason thereof, any liability of defendants herein shall be diminished, offset or
21 abated by reason of said conduct.

22 WHEREFORE, these answering defendants pray as follows:

- 23 1. That plaintiff take nothing by way of her complaint and that these answering
24 defendants be dismissed hence;
25 2. For reasonable attorneys' fees;
26 3. For costs of suit incurred herein; and
27

28

1 4. For such other and further relief as the Court deems just and proper.

2 DATED: January 26, 2006

3 BOORNAZIAN, JENSEN & GARTHE

4
5 By: 

6 GREGORY ROCKWELL, ESQ.

Attorneys for Defendants

7 ALAMEDA COUNTY MEDICAL
CENTER,

8 ZELLER, BIEHL, COTANCHE,
9 ALFONSO and MARKLE

PROOF OF SERVICE BY MAIL
(C.C.P. SECTIONS 1013(a) -2015.5)

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of **DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT FOR DAMAGES**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Charles Schwartz, Esq.
2128 Broadway
Oakland, CA 94612
Tel: (510) 986-1300

Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on January 26, 2006.



Candace Hankins

242660368582